

**Tuesday, July 17, 2007**

The Board met at its offices at 450 N Street, Sacramento, at 10:16 a.m., with Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

The meeting was opened in honor of the memory of Richard "Rich" D. Goodrich, Technical Advisor to the Chief, Headquarters Operations Division in the Sales and Use Tax Department and Lieutenant Colonel of the United States Army Reserve.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Cynthia Garofalo, 383332

2003, \$13,452.50 Assessment

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent properly included appellant's capital gains income from the sale of a Colorado business in determining her 2003 California income tax.

Whether appellant is entitled to an Other State Tax Credit for taxes paid to Colorado.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.1)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 7.2)

Amy Kelly, Supervising Tax Counsel, Appeals Division, stated for the record that based on the exhibits provided by the appellant, all parties are in agreement that the 2003 tax return was filed incorrectly. The appellant will file an amended return with the Franchise Tax Board. The appeal was withdrawn as there were no further issues in dispute.

Action: The Board took no action.

Exhibits to these minutes are incorporated by reference.

Helen Arbini and Jerrold E. Arbini, 255904

1993, \$12,899.00 Assessment

1994, \$4,697.00 Assessment

For Appellant:

Jerrold Arbini, Taxpayer

Michael P. Casterton, Attorney

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have demonstrated error in respondent's actions, which were based on federal adjustments.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.3)

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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Donald E. Schrock and Lucie Kay Schrock, 341970

1999, \$165,780.09 Assessment

For Appellant:

Donald E. Schrock, Taxpayer

Lucie Kay Schrock, Taxpayer

Carol P. Schaner, Attorney

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants' claim for refund is barred by the statute of limitations.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

John I. Alioto and Linda M. Alioto, 204713

1989, \$127,171.00 Tax, \$6,358.55 Negligence Penalty, \$31,792.75 Late Filing Penalty

1990, \$5,293.00 Tax, \$1,058.60 Accuracy Penalty

1991, \$180.00 Tax, \$36.00 Accuracy Penalty

For Appellant:

John I. Alioto, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have demonstrated error in the assessments of tax and penalties, which are based upon federal actions.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.4)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 7.5)

Department's Exhibit: Summary of Appellant's Exhibits (Exhibit 7.6)

Action: Upon motion of Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that further briefing be conducted and the briefing schedule be set by the Appeals Division. Thereafter the case will be scheduled to another oral hearing calendar.

**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Robert Warren Rosenbaum, 331543*; and, *Alpine Mountain Homes, Inc., 288136*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Asher Shaitrit, 198549 (ET)

5-1-99 to 5-31-01, \$156,600.00 Tax, \$15,660.00 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Robert Warren Rosenbaum, 331543 (KHO)

1-1-00 to 12-31-02, \$66,909.13 Tax

Action: The Board took no action.

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Kin Shaw Wong, 301272 (KH)

7-7-98 to 6-1-99, \$27,606.38 Tax, \$1,710.30 Penalty

Action: Redetermine as recommended by the Appeals Division.

Gbone, Inc., 310590 (UT)

1-14-04, \$65,235.38 Tax, \$4,785.00 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Alpine Mountain Homes, Inc., 288136 (KHM)

9-1-01 to 9-30-03, \$31,705.61 Tax

Action: The Board took no action.

Tarfa Saladin Momoh and Mohamed Abdo S. Sharif, 396002 (ET)

January 9, 2007, \$1,612.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

R &amp; V Enterprises, Inc., 395040 (ET)

December 5, 2006, \$222.77 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Mercedes Perez Robles, 397909 (ET)

February 21, 2007, \$36.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Kung-Ming Chiu, 332187; Christina Hanzel, 346375; Robert Dean Hines, 353727; Thomas W. Kulp and Suzanne G. Kulp, 335780; and, Sheral A. Vandyke, 377373.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Hanoch Bental and Hasida Bental, 361460

2001, \$7,169.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Steven Booth and Louise Booth, 353622

2000, \$4,004.00 Tax, \$1,001.00 Penalty

2001, \$38,856.00 Tax, \$9,714.00 Penalty

2002, \$31,945.00 Tax, \$7,986.25 Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

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John Buerger, 353717

2003, \$9,069.00 Tax, \$4,624.50 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Kung-Ming Chiu, 332187

2002, \$2,518.00 Tax, \$439.14 Accuracy-Related Penalty

Action: The Board took no action.

Jimmie Ray Cox, 346817

2003, \$1,078.00 Tax, \$269.50 Late Filing Penalty, \$269.50 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Christopher W. Farnham, 361193

2003, \$582.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Frances M. Gleason, 350468

2004, \$1,089.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Del Goetz, 328907

1999, \$816.00 Tax

2000, \$1,627.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Christina Hanzel, 346375

2003, \$4,846.00 Tax, \$1,211.00 Late Filing Penalty, \$1,852.25 Notice and Demand Penalty

Action: The Board took no action.

Francine Hiebert, 346210

Theodore Hiebert, 352132

1998, \$610.80 Innocent Spouse Relief Requested

Action: Sustain the action of the Franchise Tax Board.

Robert Dean Hines, 353727

1989, \$2,524.52 Interest Abatement

1990, \$12,209.66 Interest Abatement

Action: The Board took no action.

Bradley Kastle, 349312

2000, \$12,114.00 Tax, \$3,028.50 Late Filing Penalty, \$3,028.50 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

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John David Konye, 356970

2002, \$130.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Thomas W. Kulp and Suzanne G. Kulp, 335780

2002, \$2,335.00 Assessment

Action: The Board took no action.

Richard B. Love, 349306

2003, \$896.00 Assessment

Action: Sustain the action with concession by the Franchise Tax Board.

Kerry O'Deay, 317612

2002, \$2,754.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

R.E.A., LLC, 350079

2004, \$1,861.00 Claim for Refund

2005, \$1,861.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jonathan Reyes, 362323

2004, \$1,277.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Teresa Ruvalcaba, 354291

2003, \$593.50 Assessment

Action: Sustain the action of the Franchise Tax Board.

Estate of Toshiyuki Omote and Sue Sumiye Omote (Deceased), 249575

1983, \$10,828.95 Assessment

1984, \$10,802.22 Assessment

1985, \$9,910.34 Assessment

Action: Sustain the action of the Franchise Tax Board.

Sheral A. Vandyke, 377373

2004, \$488.00 Tax, \$122.00 Late Filing Penalty, \$122.00 Notice and Demand Penalty

Action: The Board took no action.

James Wagner, 342994

2003, \$1,380.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

James T. Wandrey, 351688

2003, \$2,737.10 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Lloyd Yost, 281156

Joy Rippeth, 304640

2000, \$497.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Alfred J. Antonini, 283987

2001, \$22,042.00 Tax, \$5,510.50 Late Filing Penalty, \$5,510.50 Notice and Demand Penalty,  
\$108.00 Filing Enforcement Cost Recovery Fee

Action: Deny the petition for rehearing.

John Buergel, 300340

2002, \$9,283.00 Tax, \$2,320.75 Late Filing Penalty

Action: Deny the petition for rehearing.

James C. Ross and Anne J. Lumsdaine, 311707

2002, \$1,201.00 Claim for Refund

Action: Deny the petition for rehearing.

Donnie Schroeder, 332676

2003, \$3,042.00 Tax, \$760.50 Late Filing Penalty, \$760.50 Notice and Demand Penalty, \$90.00  
Filing Enforcement Fee, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Julie Berg, 334817

2005, \$383.53

Action: Sustain the action of the Franchise Tax Board.

John D. Bray, 379685

2006, \$297.50

Action: Sustain the action of the Franchise Tax Board.

Tuyet T. Dang, 373267

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Alice Joseph Derkrikorian, 374557

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Timothy Eldridge, 378579

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Petronila P. Fernandez, 373093

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Taunya Gaitan, 345942

2005, \$347.20

Action: Sustain the action of the Franchise Tax Board.

Sang N. Hoang, 373213

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Eddie Lee James, 378576

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

James Jewell, 378770

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Myung Joo Jung, 374512

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Dukye Lim, 374438

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Agustina M. Macasieb, 377349

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Victor Magallanez, 373092

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Richard Pruitt Jr., 374319

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Sajjad Riyaz, 349075

2004, \$300.00

2005, \$300.00

Action: Sustain the action of the Franchise Tax Board for the year 2004. The appeal for the year 2005 is dismissed for lack of jurisdiction.

Kuang Chin Wan, 378581

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Jean Day, 348949

2005, \$327.50

Action: Deny the petition for rehearing.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

(Motion expunged.) See Page 176.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

Speaker: David Otero, Attorney, representing *Arcadia Financial LTD.*, 382211; and, *Transouth Financial Corporation*, 305188.

(Motion expunged.) See Page 177.

**SPECIAL TAXES MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

The Board deferred consideration of the following matter: *Desert Grocers, Inc.*, 168288.

With respect to the Special Taxes Matters, Redeterminations, Relief of Penalties, and Denial of Claims for Refund, Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Webb Oil, Inc.*, 244367 (MT), Ms. Mandel not participating in accordance with Government Code section 87105 in *Maria Juana Chavez*, 222501(ET); the Board made the following orders:

Webb Oil, Inc., 244367 (MT)

1-1-02 to 11-30-02, \$60,821.44

Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.



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Desert Grocers, Inc., 168288 (ET)

3-1-99 to 2-28-00, \$61,146.59

Action: The Board took no action.

Maria Juana Chavez, 222501(ET)

1-1-92 to 3-8-95, \$3,038,942.59

Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Ashok V. Parmar, 339011 (ET)

12-19-93 to 3-8-95, \$69,147.00

Action: Approve the denial of claim for refund as recommended by staff.

Ashok V. Parmar, 339012 (ET)

12-19-93 to 3-8-95, \$69,147.00

Action: Approve the denial of claim for refund as recommended by staff.

Ashok V. Parmar, 339013 (ET)

12-19-93 to 3-8-95, \$69,147.00

Action: Approve the denial of claim for refund as recommended by staff.

Ashok V. Parmar, 339015 (ET)

12-19-93 to 3-8-95, \$69,147.00

Action: Approve the denial of claim for refund as recommended by staff.

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Shell Martinez Refining Company, 402395*; and, *Shell Martinez Refining Company, 333748*; the Board made the following orders:

Shell Martinez Refining Company, 402395 (MT)

4-1-96 to 7-31-98, \$223,473.20

Action: Approve the credit and cancellation as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Shell Martinez Refining Company, 333748 (MT)

4-1-96 to 7-31-98, \$232,193.78

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Bel Air Mart, 379480 (ET)

11-3-06 to 11-3-06, \$57,534.41

Action: Approve the refund as recommended by staff.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Speaker: Joseph A. Vinatieri, Attorney, made remarks on behalf of *General Electric Capital Corporation, 104862*.

General Electric Capital Corporation, 104862 (OHA)

1-1-94 to 12-31-99, Amount Undetermined

Considered by the Board: January 31, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Mr. Leonard moved that the petition be granted. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Ms. Chu voting no, Ms. Mandel not participating in accordance with Government Code section 87105.

Speaker: Torgny Nilsson, General Counsel, made remarks on behalf of *Sierra Railroad Company, 287920, 288213*.

Sierra Railroad Company, 287920, 288213 (JHF)

10-1-00 to 9-30-03, \$10,867.07 Tax

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.<sup>1</sup>

B &amp; R Industries, Inc. 254513 (EA)

10-1-97 to 8-12-00, \$400,000.00 Successor Liability

Considered by the Board: September 13, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and duly carried, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee voting no, the Board ordered that the petition for rehearing be granted.

Fakheri, Inc., 269581 (AC)

4-1-99 to 8-11-99, \$15,406.06 Tax

Comm Club LLC, 269579 (AC)

8-12-99 to 3-31-02, \$104,028.98 Tax

Considered by the Board: February 27, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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<sup>1</sup> Additional action was taken later in the day.

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Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**DC Motors, LLC 285802 (EA)**

10-1-00 to 9-30-03, \$12,214.11 Tax

Considered by the Board: February 27, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**Carpet U.S.A. Ltd., 299501 (AS)**

1-1-00 to 12-31-02, \$25,428.41 Tax, \$3,042.80 Negligence Penalty

Considered by the Board: February 27, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**Elier Rivera, 259745 (AA)**

7-1-02 to 6-12-03, \$94,180.12 Tax

Considered by the Board: February 27, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**Parquette Industries, Inc., 283835 (JHF)**

4-1-01 to 3-31-04, \$104,170.39 Tax, \$10,184.19 Negligence Penalty

Considered by the Board: March 20, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**Sierra Railroad Company, 287920, 288213 (JHF) (Continued)**

Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined and the claim be denied as recommended by the Appeals Division.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY****Benjamin R. Du and Carmela L. Du, 339310**

1999, \$288,938.00 Claim for Refund

Considered by the Board: Formal Opinion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the formal opinion.

**Tonya Harris, 351399**

2001, \$567.00 Claim for Refund

Considered by the Board: February 28, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

**Walter J. Kubon, Jr., 337056**

1999, \$12,895.00 Tax, \$13,067.50 Penalties

Considered by the Board: February 27, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposing a \$750.00 frivolous appeal penalty.

**John Tu and Mary Tu, 286420**

1997, \$97,215.00 Assessment

**David Sun and Diana Sun, 286421**

1997, \$97,215.00 Assessment

**Kingston Technology Corporation, 288052**

1997, \$14,282.00 Claim for Refund

Considered by the Board: August 16, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and duly carried, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee voting no, the Board adopted a decision granting the petition for rehearing based on error in the law.

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**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY**

Cisco Systems Capital Corporation, 373491 (GH)

10-1-03 to 6-30-04, \$960,747.31

Considered by the Board: April 25, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

**PROPERTY TAX MATTERS**

**Audits**

AccessLine Communications Corporation (7887)

2004, \$573,000.00 Escaped Assessment, \$57,300.00 Penalties, \$137,520.00 In-lieu Interest

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped assessment, plus penalties and in-lieu interest, as recommended by staff.

**Unitary and Nonunitary Escaped/Excessive Assessments**

Helio, LLC (2774)

2006, \$5,850,000.00 Escaped Assessment, \$585,000.00 Late Filing Penalty

VizAbility Communications, Inc. (7965)

2006, \$7,600.00 Escaped Assessment, \$760.00 Late Filing Penalty

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessments, plus penalties and statutory interest, as recommended by staff.

Union Pacific Railroad Company (843)

2006, \$207,394.00 Value

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the nonunitary escaped and excessive assessments as recommended by staff.

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**Private Railroad Car Tax Refunds**

Kennecott Utah Copper Corporation (611)

2006, \$5,134.26

Catalyst &amp; Chemical Containers Alberta, Inc., (6411)

2006, \$57.27

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board granted the refunds as recommended by staff.

**OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Grigor Tserunian*; *Joan Femino*; and, *Steven and Sharon Self*; as recommended by staff.

The Board recessed at 12:48 p.m. and reconvened at 1:35 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that its previous motion be expunged.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Chu not participating in accordance with Government Code section 87105 in *Ericsson, Inc.*, 399663; Ms. Mandel not participating in accordance with Government Code section 87105 in *Walt Disney World Company*, 399527; and, *Ericsson, Inc.*, 399663; the Board made the following orders:

Ms. Mandel stated for the record that Mr. Chiang would not participate in accordance with Government Code section 87105 in *Walt Disney World Company*, 399527; and, *Ericsson, Inc.*, 399663.

I.S.W., Inc., 356502 (AS)

4-1-02 to 3-31-05, \$68,833.95

Action: Approve the redetermination as recommended by staff.

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Contract Hardware, Inc., 253692 (OHA)

10-1-05 to 6-30-00, \$215,993.58

Action: Approve the redetermination as recommended by staff.

Donahue & Associates Int'l, Inc., 354584 (OHA)

1-1-99 to 6-30-04, \$183,330.37

Action: Approve the redetermination as recommended by staff.

Nexl, Inc., 381888 (OHB)

4-1-03 to 3-31-06, \$63,171.82

Action: Approve the redetermination as recommended by staff.

Richemontnorth America, Inc., 399543 (OHB)

7-1-06 to 9-30-06, \$118,734.84

Action: Approve the relief of penalty as recommended by staff.

Walt Disney World Company, 399527 (EA)

11-1-06 11-30-06, \$256,125.57

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Ericsson, Inc., 399663 (OHC)

10-1-01 to 9-30-03, \$214,210.45

Action: Approve the denial of claim for refund as recommended by staff. Ms. Chu and Ms. Mandel not participating in accordance with Government Code section 87105.

Transouth Financial Corporation, 308884 (OHB)

10-1-04 to 6-30-05, \$710,041.99

Action: Approve the denial of claim for refund as recommended by staff.

# **SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

Upon motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that its previous motion be expunged.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Chu and Ms. Mandel not participating in accordance with Government Code section 87105 in *Ericsson, Inc., 267916*, the Board made the following orders:

525 Studios, Inc., 397215 (AS)

10-1-99 to 6-30-02, \$53,328.60

Action: Approve the refund as recommended by staff.

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S.W. School Supply, Inc., 394230 (EH)

4-1-06 to 6-30-06, \$102,018.95

Action: Approve the refund as recommended by staff.

Bakersfield Memorial Hospital, 397742 (ARH)

4-1-03 to 6-30-06, \$120,411.95

Action: Approve the refund as recommended by staff.

Yeager Skanska, Inc., 354446 (EH)

4-1-05 to 12-31-05, \$139,474.45

Action: Approve the refund as recommended by staff.

Scripps Health, 361682 (FH)

4-1-03 to 9-30-03, \$118,087.01

Action: Approve the refund as recommended by staff.

Southwest Traders Incorporated, 388617 (EH)

1-1-06 to 3-31-06, \$50,925.75

Action: Approve the refund as recommended by staff.

Penske Truck Leasing Company, L.P., 374794 (OHB)

10-1-00 to 6-30-04, \$775,221.32

Action: Approve the refund as recommended by staff.

Mercedes Benz USA, LLC, 387704 (KH)

1-31-07 to 3-16-07, \$432,536.00

Action: Approve the refund as recommended by staff.

Hawaiian Gardens Card Club, Inc., 397181 (AA)

10-1-02 to 9-30-05, \$63,809.19

Action: Approve the refund as recommended by staff.

Trench Limited, 393427 (OHA)

10-1-06 to 12-31-06, \$56,083.87

Action: Approve the refund as recommended by staff.

Fujitsu Computer Systems Corporation, 316138 (GH)

7-1-01 to 3-31-05, \$292,573.76

Action: Approve the refund as recommended by staff.

Sierra Central Credit Union, 262339 (KH)

1-1-01 to 12-31-04, \$196,048.66

Action: Approve the refund as recommended by staff.



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Ericsson, Inc., 267916 (OHC)

10-1-01 to 9-30-03, \$7,111,093.84

Action: Approve the refund as recommended by staff. Ms. Chu and Ms. Mandel not participating in accordance with Government Code section 87105.

Arcadia Financial LTD., 382211 (OHB)

1-1-02 to 9-30-05, \$2,761,063.94

Action: Approve the refund as recommended by staff.

Transouth Financial Corporation, 305188 (OHB)

4-1-03 to 6-30-05, \$1,597,677.57

Action: Approve the refund as recommended by staff.

Delaware G3 Enterprises, Inc., 389759 (KH)

7-1-06 to 9-30-06, \$179,562.25

Action: Approve the refund as recommended by staff.

Barry Callebaut USA LLC, 351499 (OHB)

7-1-05 to 12-31-05, \$214,083.49

Action: Approve the refund as recommended by staff.

RI Heritage Inn of San Bernadino, 399923 (OHA)

1-1-06 to 3-31-06, \$72,896.21

Action: Approve the refund as recommended by staff.

High Desert Federal Credit Union, 378912 (EH)

7-1-03 to 9-30-06, \$67,055.21

Action: Approve the refund as recommended by staff.

**SALES AND USE TAX APPEALS HEARINGS**

Ed Emadi, Inc., 249588, 273019 (GH)

7-1-00 to 9-30-03, \$0.00 Tax, \$220,950.52 Fraud Penalty

For Petitioner:

Hedayat Emadi, Taxpayer

Dennis Perez, Attorney

Michel Stein, Attorney

Massoud Roudpeyma, Witness

Wendy Hamett, Witness

Kam Ashtiani, Witness

For Department:

Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Sales and Use Tax Department has established through clear and convincing evidence that petitioner's underreporting of tax was due to fraud or intent to evade the tax.

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Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Rogelio G. Cisneros, 343638 (GH)

7-1-01 to 12-31-04, \$162,426.09 Tax, \$24,858.32 Penalties

For Petitioner:

Rogelio Cisneros, Taxpayer

Cindy Ho, Attorney

Robert Goldstein, Attorney

For Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audit allowance for price changes is sufficient.

Whether petitioner was negligent.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

The Chairwoman recognized the following interns, who then introduced themselves: Christopher Woo and Peter Lin, interns with the State Controller's Office, and Martin Leong, intern with Assemblyman Eng's office.

Marcella Maria Rosales, 308469 (KH)

1-1-03 to 11-17-03, \$1,404.00 Tax, \$140.40 Failure to File Penalty

For Petitioner:

Marcella Rosales, Taxpayer

For Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is liable for the unreported taxable sales.

Whether petitioner is entitled to relief of the failure to file penalty.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board deferred the decision to give the Department an opportunity to proceed against the person operating the business, if appropriate, and to make any appropriate adjustments. The Appeals Division will then prepare a recommendation to the Board.

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**LOCAL TAX REALLOCATION HEARING**

City of Brisbane, City of Los Angeles, City of San Diego, City of San Jose, 384183  
1-1-01 to 9-30-07, \$1,914,483.00

For Petitioner:	Al Koch, Attorney, City of Brisbane
For Department:	Carole Ruwart, Tax Counsel
City of Los Angeles:	
For Affected Jurisdiction:	Evelyn Fernandez Melone, Tax Auditor
City of San Jose:	
For Affected Jurisdiction:	David McPherson, Deputy Director of Finance
City of San Diego:	
For Affected Jurisdiction:	Michael Lawson, Representative Julio Canizal, Supervising Economist

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the retailer's sales shipped to California consumers from warehouses outside California were subject to sales tax that should have been allocated directly to petitioner.

Whether the proper allocation of local tax for sales delivered from California warehouses is covered by the present petition or otherwise properly before the Board for decision.

Whether the local tax for sales delivered from inside California should be reallocated.

Whether local tax for DVD rentals should be reallocated.

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Yee voting no, Ms. Mandel abstaining, the Board ordered that the petition be postponed to August without further briefing.

**CHIEF COUNSEL MATTERS****RULEMAKING****Proposed Amendments to Property Tax Rule 325, *Notice and Clarification of Decision***

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to amend Property Tax Rule 325, *Notice and Clarification of Decision* (Exhibit 7.7).

Speakers: Stephen Bennett, CPA, Letwak & Bennett  
John McKibben, Deputy Executive Officer, Los Angeles County Board of Supervisors, California Association of Clerks and Election Officials  
Thomas Parker, Deputy County Counsel, Sacramento County  
Michael Strong, Sutter County Assessor and President of the California Assessors' Association

Action: The Board took no action because the petition was withdrawn.

The Board directed staff to secure a revenue estimate and providing another petition is submitted this item will come back to the Board in September.

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**PROPERTY TAX****Consideration of Policy Change—Welfare Exemption “Community Benefit Test”**

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the consideration of policy change—Welfare Exemption “Community Benefit Test” (Exhibit 7.8).

Speakers: Thomas Parker, Deputy County Counsel, Sacramento County  
Michael Strong, Sutter County Assessor and President of the California Assessors’ Association  
Ray Schmidt, Operations Vice President, Assist International  
Dana Graham, Executive & Operations Administrator, Assist International

Action: The Board deferred consideration to a later date and referred the matter to the interested parties process.

**OTHER CHIEF COUNSEL MATTERS****Cooperation with Native American Tribes – Taxation of Cigarettes & Tobacco Products, MSA Issues**

Randy Ferris, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding cooperation with Native American Tribes – taxation of cigarettes and tobacco products, MSA issues.

Speaker: Jerome Encinus, Consultant, Senate Leader Dick Ackermann

Action: The Board requested additional information for consideration at the next Board meeting.

**ADMINISTRATIVE SESSION****ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 7.9).

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Janice L. Anderson, Tax Technician III, West Covina District Office  
Nadene Carpenter, Associate Governmental Program Analyst, Technology Services Division, Headquarters  
Bruce E. Henline, Business Tax Administrator III, Out-of-State District Office, Sacramento  
Richard W. McGowan, Business Taxes Specialist I, Out-of-State District Office, Sacramento  
Sharon Shiraishi, Business Taxes Specialist I, Local Revenue Allocation Unit, Headquarters  
Richard R. Vagg, Data Processing Manager IV, Technology Services Division, Headquarters

Action: Approve the Board Meeting Minutes of May 31 and June 1, 2007.

Action: Approve the time extensions to Alpine, Amador, El Dorado, Humboldt, Inyo, Lassen, Modoc, Monterey, Placer, San Benito, Trinity and Yuba Counties to complete and submit 2007-08 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 (Exhibit 7.10).

Action: Approve the revision of the Timber and Timberland Values Manual (Exhibit 7.11)

#### **OTHER ADMINISTRATIVE MATTERS**

##### **Adoption of the 2007-08 Private Railroad Car Tax Rate**

David E. Hayes, Research and Statistics Section, made introductory remarks regarding the adoption of the 2007-08 private railroad car tax rate (Exhibit 7.12).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2007-08 private railroad car tax rate of 1.096 percent as recommended by staff.

##### **Adoption of the 2007 Private Railroad Car Roll**

Stanley Siu, Chief, State-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding the 2007 Private Railroad Car Roll (Exhibit 7.13).

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2007 Private Railroad Car Roll.

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**Adoption of the 2007 State-Assessed Property Roll**

Mr. Siu made introductory remarks regarding the 2007 State-Assessed Property Roll (Exhibit 7.14).

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Steel not participating in *ConocoPhillips Company (467)* and *ConocoPhillips Pipe Line Company (480)*, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2007 State-Assessed Property Roll.

**Executive Director's Report**

Ramon Hirsig, Executive Director, provided an update regarding Multistate Tax Commission – Federation of Tax Administrators.

Mr. Hirsig introduced Ms. Randie Henry, Deputy Director who provided a report on the updated tax gap proposal (Exhibit 7.15).

Speakers: Michele Pielsticker, General Counsel, California Taxpayers Association  
William Lasher, Senior Director, Indirect Taxes, eBay, Inc.  
David London  
Johan Klehs, Representative, Linebarger, Goggan, Blair & Sampson  
Lenny Goldberg, California Tax

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD JULY 17, 2007**

Helen Arbini and Jerrold E. Arbini, 255904

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Donald E. Schrock and Lucie Kay Schrock, 341970

Final Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JULY 17,  
2007**

Ed Emadi, Inc., 249588, 273019 (GH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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## **BOARD COMMITTEE REPORTS AND ACTIONS**

### **Legislative Committee**

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the Legislative Committee report and approved the actions therein (Exhibit 7.16).

Committee votes were unanimous except for the position recommendation on SB 559 (Kehoe). A recommendation of support for SB 559 (Kehoe) duly passed with Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

### **Deputy Director's Report, Administration**

David Gau, Acting Deputy Director, Administration Department, provided an update on the Fiscal Year 2007-2008 Budget (Exhibit 7.17).

Mr. Gau reported on the budget change proposal process for fiscal year 2008-2009.

## **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 5:05 p.m. and reconvened immediately in closed session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

### **CLOSED SESSION**

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 5:25 p.m. and reconvened immediately in open session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

The Board adjourned at 5:26 p.m.

*The foregoing minutes are adopted by the Board on August 14, 2007.*

Note: The following matters were removed from the calendar prior to the meeting: *Proposed Amendments to Property Tax Rule 462.060, Change in Ownership – Life Estates and Estates for Years; Laura J. Cowings, 340623; Johnny Quik Food Stores, Inc., 303702 (KH); and, RV With Me, Inc., 298346 (UT).*